

01 HB 828/AP

House Bill 828 (AS PASSED HOUSE AND SENATE)

By: Representative Parham of the 122<sup>nd</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians, physician's assistants, and respiratory care, so as to provide for the licensing of the practice of orthotics and prosthetics; to provide for a short title; to provide for legislative intent; to provide for definitions; to prohibit the practice of orthotics and prosthetics except by certain licensed persons; to provide for exceptions; to provide for licensing standards; to provide for examinations and fees; to provide for assistants and technicians; to provide for transitional authorization to practice; to provide for penalties; to limit the provision of services; to provide for license renewal and restoration; to provide for continuing education; to provide for sanctions for certain conduct and actions; to provide for an advisory committee; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to physicians, physician's assistants, and respiratory care, is amended by inserting a new article to read as follows:

"ARTICLE 7

43\_34\_60.

This article shall be known and may be cited as the 'Orthotics and Prosthetics Practice Act.'

43\_34\_61.

The General Assembly finds that the practice of orthotics and prosthetics in this state is an allied health profession recognized by the American Medical Association, with educational standards established by the Commission on Accreditation of Allied Health Education Programs. The increasing population of elderly and physically challenged individuals who need orthotic and

prosthetic services requires that the orthotic and prosthetic professions be regulated to ensure the provision of high\_quality services and devices. The people of this state deserve the best care available and will benefit from the assurance of initial and ongoing professional competence of the orthotists and prosthetists practicing in this state. The practice of orthotics and prosthetics serves to improve and enhance the lives of individuals with disabilities by enabling them to resume productive lives following serious illness, injury, or trauma. Unregulated dispensing of orthotic and prosthetic care does not adequately meet the needs or serve the interests of the public. In keeping with requirements imposed on similar health disciplines, licensure of the orthotic and prosthetic professions will help ensure the health and safety of consumers, as well as maximize their functional abilities and productivity levels. This article shall be liberally construed to best carry out these subjects and purposes.

43\_34\_62.

As used in this article, the term:

- (1) 'Assistant' means a person who assists an orthotist, prosthetist, or prosthetist orthotist with patient care services and fabrication of orthoses or prostheses under the supervision of a licensed orthotist or prosthetist.
- (2) 'Board' means the Composite Board of State Medical Examiners created by Code Section 43\_34\_21.
- (3) 'Custom fabricated and fitted device' means that an orthosis or prosthesis is fabricated to original measurements or a mold, or both, for use by a patient in accordance with a prescription and which requires substantial clinical and technical judgment in its design and fitting.
- (4) 'Custom fitted device' means a prefabricated orthosis or prosthesis sized, or modified, or both, for use by a patient in accordance with a prescription and which requires substantial clinical judgment and substantive alteration for appropriate use.
- (5) 'Facility' means the business location where orthotic or prosthetic care is provided and has the appropriate clinical and laboratory space and equipment to provide comprehensive orthotic or prosthetic care. Licensed orthotists and prosthetists must be available to either provide care or supervise the provision of care by nonlicensed staff.
- (6) 'Level of competence' means a hierarchical position that an individual occupies within a field or profession relative to other practitioners in the profession.
- (7) 'Licensed orthotist' means a person licensed under this article to practice orthotics and who represents himself or herself to the public by title and description of services that includes the term 'orthotic,' 'orthotist,' 'brace,' or a similar title or description of services.

- (8) 'Licensed physician' means a person licensed to practice medicine under Article 2 of this chapter.
- (9) 'Licensed podiatrist' means a person licensed to practice podiatry under Chapter 35 of this title, the 'Georgia Podiatry Practice Act.'
- (10) 'Licensed prosthetist' means a person licensed under this article to practice prosthetics and who represents himself or herself to the public by title and description of services that includes the term 'prosthetic,' 'prosthetist,' 'artificial limb,' or a similar title or description of services.
- (11) 'Off\_the\_shelf device' means a prefabricated prosthesis or orthosis sized or modified, or both, for use by a patient in accordance with a prescription and which does not require substantial clinical judgment and substantive alteration for appropriate use.
- (12) 'Orthosis' means a custom designed, fabricated, fitted, modified, or fitted and modified device to correct, support, or compensate for a neuromusculoskeletal disorder or acquired condition. Orthosis does not include fabric or elastic supports, corsets, arch supports, low\_temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold as over\_the\_counter items by a drug store, department store, corset shop, or surgical supply facility.
- (13) 'Orthotic and prosthetic education program' means a course of instruction accredited by the Commission on Accreditation of Allied Health Education Programs consisting of:
- (A) A basic curriculum of college level instruction in math, physics, biology, chemistry, and psychology; and
  - (B) A specific curriculum in orthotic or prosthetic courses, including:
    - (i) Lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic or orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management;
    - (ii) Subject matter related to pediatric and geriatric problems;
    - (iii) Instruction in acute care techniques, such as immediate and early postsurgical prosthetics and fracture bracing techniques; and
    - (iv) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses.
- (14) 'Orthotic and prosthetic scope of practice' means a list that includes the role played by an occupant of a particular level of competence, what he or she can be expected to do and not to do, and his or her relation to others in the field.

These should be based on nationally accepted standards of orthotic and prosthetic certifying agencies with accreditation by the National Commission for Certifying Agencies.

(15) 'Orthotics' means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician or podiatrist for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(16) 'Orthotist' means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, or modified and fitted external orthosis to an orthotic patient based on a clinical assessment and a physician's or podiatrist's prescription, to restore physiological function or cosmesis or both and represents himself or herself to the public by such title as providing orthotic services.

(17) 'Over\_the\_counter device' means a prefabricated, mass produced device that is prepackaged and requires no professional advice or judgment in either size selection or use and includes fabric or elastic supports, corsets, generic arch supports, and elastic hoses.

(18) 'Person' means a natural person.

(19) 'Prosthesis' means a custom designed, fabricated, fitted, modified, or fitted and modified device to replace an absent external limb for purposes of restoring physiological function or cosmesis or both. Prosthesis does not include artificial eyes, ears, fingers or toes, dental appliances, cosmetic devices such as artificial breasts, eyelashes, or wigs, or other devices that do not have a significant impact on the musculoskeletal functions of the body.

(20) 'Prosthetics' means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician or podiatrist.

(21) 'Prosthetist' means an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, modified, and fitted external limb prosthesis to a prosthetic patient based on a clinical assessment and a physician's or podiatrist's prescription, to restore physiological function or cosmesis or both and represents himself or herself to the public by such title as providing prosthetic services.

(22) 'Prosthetist orthotist' means a person who practices both disciplines of prosthetics and orthotics and who represents himself or herself to the public by such title as providing prosthetic and orthotic services.

(23) 'Resident' means a person who has completed an education program in either orthotics or prosthetics and is continuing his or her clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education.

(24) 'Technician' means a person who assists an orthotist, prosthetist, or prosthetist orthotist with fabrication of orthoses or prostheses but does not provide direct patient care.

43\_34\_63.

This article shall not be construed to prohibit:

- (1) A licensed physician from engaging in the practice for which he or she is licensed;
- (2) A person licensed in this state under any other law from engaging in the practice for which he or she is licensed;
- (3) The practice of orthotics or prosthetics by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;
- (4) The practice of orthotics or prosthetics by:
  - (A) A student enrolled in a school of orthotics or prosthetics; or
  - (B) A resident continuing his or her clinical education in a residency accredited by the National Commission on Orthotic and Prosthetic Education;
- (5) The practice of orthotics or prosthetics by a person who is an orthotist or prosthetist licensed under the laws of another state or territory of the United States or another country and has applied in writing to the board, in a form and substance satisfactory to the board, for a license as an orthotist or prosthetist and who is qualified to receive the license until:
  - (A) The expiration of six months after the filing of the written application;
  - (B) The withdrawal of the application; or
  - (C) The denial of the application by the board;
- (6) A person licensed by this state as a physical therapist or occupational therapist from engaging in his or her profession;
- (7) A licensed podiatrist from engaging in his or her profession;
- (8) A licensed athletic trainer from engaging in his or her profession;
- (9) A registered pharmacist from engaging in the practice by which he or she is registered;
- (10) Any person licensed under any other article of this chapter from engaging in the practice for which he or she is licensed;
- (11) The measuring, molding, or fitting of knee braces by any person; or
- (12) Employees or authorized representatives of an orthotic manufacturer from engaging in one or more of the following: evaluating, adjusting, measuring, designing, fabricating, assembling, fitting, servicing, training, repairing, replacing, or delivering an orthotic device under the order, direction, or prescription of a physician or health provider operating within his or her licensed scope of practice.

43\_34\_64.

An application for an original license shall be made to the board on a form prescribed thereby and shall be accompanied by the required fee, which shall not be refundable. An application shall require information that in the judgment of the board will enable it to determine the qualifications of the applicant for a license.

43\_34\_65.

(a) To qualify for a license to practice orthotics or prosthetics, a person shall:

(1)(A) Possess a baccalaureate degree from a college or university;

(B) Have completed the amount of formal training, including, but not limited to, any hours of classroom education and clinical practice established and approved by the board; and

(C) Complete a clinical residency in the professional area for which a license is sought in accordance with standards, guidelines, or procedures for residencies inside or outside this state established and approved by the board. The majority of training must be devoted to services performed in the discipline for which the license will be sought and under the supervision of a practitioner licensed in orthotics or prosthetics or a person certified as an orthotist, prosthetist, or prosthetist orthotist provided the certification was obtained before the date this article becomes effective; or

(2)(A) Possess an associates degree from a college or university with specific courses of study in human anatomy, physiology, physics, chemistry, biology; and

(B) Have completed at least five years of continued work experience performed in the discipline for which the license will be sought under the supervision of a practitioner licensed in such discipline or certified in such discipline by an agency accredited by the National Commission for Certifying Agencies;

(3) Pass all written, practical, and oral examinations that are required and approved by the board;

(4) Be qualified to practice in accordance with nationally accepted standards of orthotic and prosthetic care; and

(5) Have met such other requirements as may be prescribed by the board.

(b) The standards and requirements for licensure established by the board shall be substantially equal to or in excess of standards commonly accepted in the profession of orthotics or prosthetics. The board shall adopt rules as necessary to set the standards and requirements.

(c) A person may be licensed in more than one discipline.

43\_34\_66.

The board, in consultation with the advisory committee, shall have the power

and responsibility to:

- (1) Determine the qualifications and fitness of applicants for licensure and renewal of licensure;
- (2) Adopt and revise rules consistent with the laws of this state that are necessary to conduct its business, carry out its duties, and administer this article;
- (3) Examine for, approve, issue, deny, revoke, suspend, sanction, and renew the licenses of board applicants for licensure as licensed orthotists and prosthetists and provisional licensed orthotists and prosthetists under this article and conduct hearings in connection with these actions;
- (4) Conduct hearings on complaints concerning violations of this article and the rules adopted under this article and cause the prosecution and enjoinder of the violations;
- (5) Establish application, examination, and licensure fees;
- (6) Request and receive the assistance of state educational institutions or other state agencies and prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies; and
- (7) Establish education, examination, and continuing education requirements.

43\_34\_67.

- (a) No person shall work as an assistant to an orthotist, prosthetist, or prosthetist orthotist and provide patient care services or fabrication of orthoses or prostheses unless he or she is doing the work under the supervision of a licensed orthotist, prosthetist, or prosthetist orthotist.
- (b) No person shall work as a technician unless the work is performed under the supervision of a person licensed under this article.

43\_34\_68.

- (a) Until one year after the date this article becomes effective, a person certified as an Orthotist, Prosthetist, or Prosthetist Orthotist by the American Board for Certification in Orthotics and Prosthetics, Incorporated or the Board of Orthotist/Prosthetist Certification or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards, may apply for and may be granted orthotic or prosthetic licensure under this article upon payment of the required fee. After that date, any applicant for licensure as an orthotist or a prosthetist shall meet the requirements of subsection (a) of Code Section 43\_34\_65.
- (b) On and after one year after the date this article becomes effective, no person shall practice orthotics or prosthetics in this state and hold himself or herself

out as being able to practice such professions unless he or she is licensed in accordance with this article or is exempt from such licensing. A person who violates this subsection shall, upon conviction thereof, be guilty of a misdemeanor.

(c) Within 60 days after the date this article becomes effective, a person who has practiced full time for a minimum of the past seven years in this state in a prosthetic orthotic facility as an orthotist or prosthetist may file with the board an application and the license fee determined by the board in order to continue to practice orthotics or prosthetics without satisfaction of the examination and education requirements. The board shall investigate the work history, qualifications, and fitness of the applicant. The investigation may include, but not be limited to, completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice. The board shall complete its investigation for purposes of this Code section within six months of receipt of a fully completed application. If, after receipt of the application fee, a fully completed application, and the completion of the investigation, the board determines that the applicant satisfied the work history requirements of this Code section and met all other qualifications for licensure, except the examination and education requirements, the board shall issue a license to practice orthotics or prosthetics. A license issued to a person under this subsection shall not be renewed without compliance with the requirements of Code Section 43\_34\_65.

43\_34\_69.

A licensed orthotist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist. A licensed prosthetist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician or podiatrist.

43\_34\_70.

(a) The expiration date and renewal period for each license issued under this article shall be set by the board. A license shall be valid for a period of up to two years and shall be renewed biennially as provided by rule of the board. The board shall establish continuing education requirements for the renewal of a license. These requirements shall be based on established standards of competence in the field of orthotics or prosthetics.

(b) A person who has permitted his or her license to expire or who has had his or her license on inactive status may have his or her license restored by:

(1) Making application to the board;

(2) Filing proof acceptable to the board of his or her fitness to have his or her license restored including, but not limited to, sworn evidence certifying to



active practice in another jurisdiction satisfactory to the board, and

(3) Paying the required restoration fee.

If the person has not maintained an active practice in another jurisdiction satisfactory to the board, the board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the person to complete a period of evaluated clinical experience and successful completion of an examination.

(c) A person whose license expired while he or she was:

(1) In federal service on active duty within the armed forces of the United States or with the state militia and called into service or training; or

(2) In training or education under the supervision of the United States preliminary to induction into military service

may have his or her license renewed or restored without paying a lapsed renewal fee if, within two years after termination from the service, training, or education except under conditions other than honorable, he or she furnished the board with satisfactory evidence that he or she has been so engaged and that his or her service, training, or education has been terminated.

43\_34\_71.

A person who notifies the board on forms prescribed thereby may elect to place his or her license on an inactive status and shall, subject to rules of the board, be excused from payment of renewal fees until he or she notifies the board of his or her desire to resume active status. A person requesting restoration from inactive status shall be required to pay the current renewal fee and shall be required to restore his or her license as provided in Code Section 43\_34\_70. An orthotist or prosthetist whose license is on inactive status shall not practice orthotics or prosthetics in this state.

43\_34\_72.

The board may, at its discretion, license as an orthotist or prosthetist, without examination and on payment of the required fee, an applicant who is an orthotist or prosthetist and is:

(1) Licensed under the laws of another state, territory, or country, if the requirements for licensure in that state, territory, or country in which the applicant is licensed were, at the date of his or her licensure, equal to or more stringent than the requirements in force in this state on that date; or

(2) Certified as an orthotist or prosthetist by a national certifying organization that is accredited by the National Commission for Certifying Agencies and has educational and testing standards equal to or more stringent than the licensing requirements of this state.

43\_34\_73.

- (a) The board, in consultation with the advisory committee, may:
- (1) Refuse to grant or renew a license to an applicant;
  - (2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;
  - (3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;
  - (4) Limit or restrict any license as the board deems necessary for the protection of the public;
  - (5) Revoke any license;
  - (6) Levy a fine; and
  - (7) Condition any penalty or withhold formal disposition of any matter pending the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct.
- (b) The board may take any action specified in subsection (a) of this Code section upon a finding by the board that the licensee or applicant has:
- (1) Failed to demonstrate the qualifications or standards for licensure contained in this article, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;
  - (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith, practiced fraud or deceit or intentionally made any false statement in obtaining certification to practice a licensed business or profession, or made a false statement or deceptive registration with the board;
  - (3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this paragraph and paragraph (4) of this subsection, the term 'felony' shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction' shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;
  - (4) Been arrested, charged, and sentenced for the commission of any felony or any crime involving moral turpitude where:
    - (A) A plea of nolo contendere was entered to the charge;
    - (B) First offender treatment without adjudication of guilt pursuant to the charge

was granted; or

(C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license under this article revoked, suspended, or annulled by any lawful authority other than the board; or had other disciplinary action taken against him or her by any such lawful authority other than the board; or was refused the renewal of a license by any such lawful authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this article, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness. Unprofessional conduct shall include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing practice of the business or profession licensed under this article;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to engage in any practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated, without regard to whether the violation is criminally punishable, a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority, which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this article, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction inside or outside this state. Any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance of renewal of any license so suspended for as long as the adjudication of incompetence is in effect; or

(10) Displayed any inability to practice a business or profession licensed under this article with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material.

43\_34\_74.

The board shall appoint the advisory committee. The advisory committee shall be representative of a cross section of the cultural backgrounds of the licensed orthotists and prosthetists licensed under this article and such members as the board in its discretion may determine. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine. The initial members of the advisory committee may include persons eligible for licensing under this article. Subsequent advisory committee members must be licensed pursuant to this article."

## **SECTION 2.**

(a)(1) For purposes of promulgating rules and regulations, Section 1 of this Act shall become effective on July 1 of the fiscal year in which this Act becomes effective as provided by paragraph (3) of this subsection.

(2) For all other purposes, Section 1 of this Act shall become effective July 1 of the fiscal year following the year in which this Act becomes effective as provided by paragraph (3) of this subsection.

(3) Section 1 of this Act shall become effective only upon the specific appropriation of funds for purposes of said section of this Act, including without limitation those positions necessary for implementation, as expressed in an appropriations Act enacted by the General Assembly.

(b) All sections of this Act other than Section 1 shall become effective July 1, 2002.

## **SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.